

ELECTRONICALLY FILED

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STUTMAN, TREISTER & GLATT, P.C.
 FRANK A. MEROLA
 (CA State Bar No. 136934)
 EVE H. KARASIK
 (CA State Bar No. 155356)
 ANDREW M. PARLEN
 (CA State Bar No. 230429),
 1901 Avenue of the Stars, 12th Floor
 Los Angeles, California 90067
 Telephone: (310) 228-5600
 Facsimile: (310) 228-5788
 Email: fmerola@stutman.com

SHEA & CARLYON, LTD.
 JAMES PATRICK SHEA
 (Nevada State Bar No. 000405)
 CANDACE C. CARLYON
 (Nevada State Bar No. 002666)
 SHLOMO S. SHERMAN
 (Nevada State Bar No. 009688)
 228 South Fourth Street, FirstFloor
 Las Vegas, Nevada 89101
 Telephone: (702) 471-7432
 Facsimile: (702) 471-7435
 Email: jshea@sheacarlyon.com
ccarlyon@sheacarlyon.com
ssherman@sheacarlyon.com

ekarasik@stutman.com
aparen@stutman.com

Counsel for the Official Committee Of
 Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:) BK-S-06-10725-LBR
 USA COMMERCIAL MORTGAGE COMPANY,) Chapter 11
 Debtor.)

In re:) BK-S-06-10726-LBR
 USA CAPITAL REALTY ADVISORS, LLC,) Chapter 11
 Debtor.)

In re:) BK-S-06-10727-LBR
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,) Chapter 11
 Debtor.)

In re:) BK-S-06-10728-LBR
 USA CAPITAL FIRST TRUST DEED FUND, LLC,) Chapter 11
 Debtor.)

In re:) BK-S-06-10729-LBR
 USA SECURITIES, LLC,) Chapter 11
 Debtor.)

Affects)

- ☒ All Debtors)
☐ USA Commercial Mortgage Co.)
☐ USA Securities, LLC)
☐ USA Capital Realty Advisors, LLC)
☐ USA Capital Diversified Trust Deed)
☐ USA First Trust Deed Fund, LLC)

Date: October 30, 2006
 Time: 9:30 a.m.

**LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY
 HOLDERS OF USA CAPITAL FIRST TRUST DEED FUND, LLC TO MOTION FOR ORDER
 APPROVING USE OF CASH THROUGH JANUARY 31, 2007 PURSUANT TO FOURTH
REVISED BUDGET (AFFECTS ALL DEBTORS)**

1 **TO THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE:**

2 In response to the "Motion for Order Approving Use of Cash through January 31,
3 2007 pursuant to Fourth Revised Budget," (the "Cash Motion"), the Official Committee of
4 Equity Security Holders of USA Capital First Trust Deed Fund, LLC (the "FTDF Committee")
5 hereby submits its limited objection to the Motion as follows:

6 On October 5, 2006, USA Commercial Mortgage Company ("USACM"), USA
7 Capital Realty Advisors, LLC ("USA Realty"), USA Capital Diversified Trust Deed Fund, LLC,
8 USA Capital First Trust Deed Fund, LLC (the "FTDF"), and USA Securities, LLC (collectively,
9 the "Debtors") filed the Cash Motion. which is set for hearing on October 30, 2006. In their
10 usual fashion, rather than file the Cash Budget with the Motion, the Debtors advised in the
11 Motion that the Debtors would file the Cash Budget with the Court on October 20, 2006. The
12 Cash Motion, however, is absolutely meaningless without the Cash Budget. The date for
13 objections to the Motion is October 23, 2006, thereby giving parties in interest only two weekend
14 days to review and prepare a response to the Cash Motion.

15 Given the lack of a meaningful response time, the four Committees and the
16 Debtors entered in to a stipulation that sets forth later objection and reply dates, which is subject
17 to the approval of the Court (the "Cash Motion Stipulation"). The Cash Motion Stipulation was
18 finally signed by the Debtors on October 20, 2006 and was thereafter promptly filed with the
19 Court. As of the date of filing this pleading (the same date as the original response to the Cash
20 Motion would be due), the Court had not yet entered the Cash Motion Stipulation. Accordingly,
21 the FTDF Committee is compelled to submit this limited objection to the Cash Motion, which
22 may be supplemented in the event the parties are unable to resolve the FTDF Committee's issues
23 related to the Cash Budget and the Court enters the Cash Motion Stipulation.

24 The FTDF Committee (after preliminary review) has three issues with the Cash
25 Budget. First, the Cash Budget appears to provide that FTDF will pay USA Realty a
26 management fee for serving as manager of the FTDF. The FTDF Committee has advised the
27 Debtors that they may reserve for the management fee from FTDF loan collections, but that such
28 fee should not be paid over to USA Realty or any other Debtor entity. The FTDF's obligation to

1 pay the management fee is in dispute as FTDF has claims against USA Realty for
2 mismanagement and may have offset or recoupment rights. Furthermore, the FTDF has also
3 been asked to pay nearly a 10% share of all of the fees and costs incurred by Mesirow Financial
4 (collectively, "Mesirow"), which effectively is serving as the manager of the FTDF. The FTDF
5 should not be required to pay both the fee allocation for Mesirow as well as the USA Realty
6 management fee. Accordingly, the Debtors should be required to reserve and not pay to USA
7 Realty or any other related entity the management fee at this time until the disputes among the
8 estates are resolved by settlement or judgment.

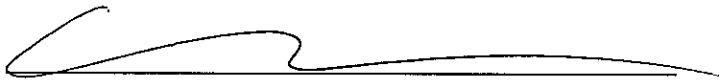
9 Second, the Cash Budget provides for a \$130,000 monthly allocation to the FTDF
10 for the Debtors' professional fees and costs. This proposed allocation appears to be the
11 settlement negotiated on the eve of the last fee application hearing between the Debtors'
12 professionals and the USACM Committee without the consent of the FTDF Committee. The
13 FTDF Committee subsequently agreed to an additional interim allocation of the Debtors'
14 professional fees and costs subject to the FTDF Committee's rights to contest such increased
15 allocation prior to the final hearing on professional fee applications and so long as the USACM
16 paid any increased allocation for the FTDF until the allocation is resolved on a final basis. While
17 the FTDF Committee is not certain of the Debtors' intent with respect to the \$130,000 monthly
18 charge to the FTDF contained in the Cash Budget, the Debtors should not be permitted through
19 the Cash Budget to effect a permanent allocation of the Debtors' professional fees and costs
20 absent the consent of the FTDF Committee.

21 Finally, as noted by the FTDF Committee in its response to each of the motions to
22 use cash filed by the Debtors in these cases since the Petition Date, the FTDF professional fee
23 and cost amounts contained in the Cash Budget are merely estimates used for budget purposes
24 and the actual fees and costs may be lower or higher than the budgeted amounts, and inclusion of
25 the fees and costs in the Cash Budget should have no bearing on the actual fees and costs
26 allowed for FTDF professionals. Likewise, the fees and costs budgeted for the Debtors'
27 professionals as well as the professionals for the other Committees as reflected in the Cash
28 Budget are not deemed allowed fee and cost amounts, and all parties' rights are reserved to object

1 to professional fees and costs pursuant to the interim fee procedure applicable in these cases and
2 as otherwise ordered by the Court.

3 **WHEREFORE**, the FTDF Committee requests that Court approve the Motion
4 only if: (1) any management fees to be charged to the FTDF are reserved and not paid over to
5 any Debtor entity; (2) any professional fee and expense allocation contained in the Cash Budget
6 is deemed interim, is subject to the FTDF Committee objection up until the final hearing on fee
7 applications in these cases, and any additional fee and expense allocation to the FTDF is paid by
8 USACM until the allocation dispute is resolved by agreement or judgment; and (3) all
9 professional fees and costs contained in the Cash Budget are estimates, are not deemed to be
10 allowed, and the right of all parties are reserved to object to such fees and costs at a future date.

11
12 Respectfully submitted this 23rd day of October, 2006.

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15 FRANK A. MEROLA (CA State Bar No. 136934),
16 EVE H. KARASIK (CA State Bar No. 155356), and
17 ANDREW M. PARLEN (CA State Bar No. 230429), Members of
18 STUTMAN, TREISTER & GLATT, P.C.
19 1901 Avenue of the Stars, 12th Floor
20 Los Angeles, CA 90067
21 Telephone: (310) 228-5600

22 and

23 CANDACE C. CARLYON
24 Shea & Carlyon, Ltd.
25 228 S. Fourth Street, First Floor
26 Las Vegas, NV 89101
27 Telephone: (702) 471-7432
28 COUNSEL FOR THE
OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS
OF USA CAPITAL FIRST TRUST DEED FUND, LLC